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No. 562

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

THE QUECHAN TRIBE OF THE FORT YUMA RESERVATION,
Petitioner,

v.

CLYDE F. THOMPSON, ET AL., and ERNEST RISLING, ET AL., members, and as the representatives of, and on the relation of the Indians of California,

and

THE UNITED STATES OF AMERICA, *Respondents.*

On Petition for Writ of Certiorari to the United States Court of Claims

---

BRIEF FOR CLYDE F. THOMPSON, ET AL., AND ERNEST RISLING, ET AL., IN OPPOSITION

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OPINIONS BELOW

The opinion of the Indian Claims Commission (Pet. App. 4) is reported at 13 Ind. Cl. Comm. 89. The Court of Claims did not write an opinion.

JURISDICTION

The final order of the Court of Claims was entered July 8, 1964 (Pet. App. 1). The petition for a writ of certiorari was filed October 5, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. § 1255(1) and § 20(c) of the Indian Claims Commission Act of August 13, 1946, 60 Stat. 1049, 1054 (25 U.S.C. § 70s(c)).

QUESTION PRESENTED

A representative claim was filed in the Indian Claims Commission by certain individual Indians on behalf of an identifiable group of Indians known as the Indians of California (and including substantially all decendents of Indians residing in California in 1852) to recover for lands in California taken by the United States. The claim was opposed by certain Indian tribes in California including petitioner who filed their separate claims for certain California lands. The Commission determined that the representative claim did not include tribal Indians with individual tribal claims; restricted the identifiable group represented to unorganized, nontribal Indians; and sustained the right to recover in the representative claim for nontribal lands only. The Commission also sustained tribal claims for other lands. Thereafter, the representative claim as confined and restricted by the Commission, was compromised and settled with the United States and it developed that the land claimed by a tribe (petitioner whose separate claim had been sustained by the Commission) was thought to be not as valuable as the land left to the representative claim.

The question is whether petitioner, the Quechan Tribe, may change its earlier position and at this late

date participate as a matter of right in the settlement and throw its land into the settlement, without the consent of respondents or defendant, simply because to participate could mean a larger recovery for its members than they would receive for their less valuable land if the tribe's claim is disposed of separately.

STATEMENT

Following enactment of the Indian Claims Commission Act, 60 Stat. 1049 (25 U.S.C. §§ 70a-70w), some sixteen separate suits were filed in the Commission seeking compensation for the taking of original Indian title to all lands in California except lands paid for pursuant to the judgment of the Court of Claims in *Indians of California*, 98 C. Cls. 583 (1943). Among the claimants were respondents Thompson and Risling who filed representative claims on behalf of the identifiable group of Indians known as the Indians of California and then defined as those Indians residing in California on June 1, 1852, and their descendents as enrolled pursuant to the Act of May 28, 1928, 45 Stat. 602. Among the other claims filed were those of petitioner and other organized Indian tribes seeking recovery for certain tribal lands wholly or partly in California.

The claims of respondents and petitioner overlapped to the extent that respondents asserted the right to represent all California Indians and to recover on their behalf for all California lands not paid for in *Indians of California, supra.* In the same way respondents' claims overlapped the claims of other tribes for certain California lands.

Opposition of the defendant, petitioner and other tribal claimants to respondents' representative claims

led the Commission, on January 20, 1958, to deny respondents' claims to represent all California Indians. The Commission ruled that other claimants, including petitioner, all of whom had tribal organizations, could maintain their separate claims for California lands. 6 Ind. Cl. Comm. 87 (Appendix A, *infra.*) It was said by the then Chief Commissioner, in his separate opinion, that respondents' claim of representation was limited to "the Indians whose tribal connections had been lost because of extinction of tribal identity or tribal organization * * *." Appendix A, p. 17. The opinion of the two associate Commissioners stated that the separate tribal organizations, including petitioner, could assert their respective claims and "recover for such [lands] as they may prove they had Indian title to when the defendant acquired them * * * as to such lands * * * [respondents] have no right to make claim therefor." Appendix A, p. 19.

Following the restriction of respondents' claims as to land and people, the Commission ordered that all of California be divided into two parts.[1] "Area A" was to include the lands claimed by petitioner and other tribal groups. Respondents' claim was confined by the order to "Area B" which included "all lands within the State of California, except those in Area A * * *."[2] As the Commission stated, "the primary purpose of dividing the State into two parts is to limit the land claim of * * * [respondents] to all that part of Cali-

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[1] Order of October 6, 1958, pursuant to the Commission's opinion of that date. 6 Ind. Cl. Comm. 666.

[2] The actual boundary line between Areas A and B was fixed by expert testimony and by stipulation between the parties including petitioner and has not been involved in any controversy since that time.

fornia not included in the claims of those tribes or groups [including petitioner] that have filed cases for specific areas in the State." 6 Ind. Cl. Comm. 666, 671.

At the time of the division of California into "Area A" and "Area B", the Yokiah, Yana and Shasta Indians were permitted, with the approval of respondents, to merge their claims with respondents. 6 Ind. Cl. Comm. 674.[3] While this opportunity was then also open to other Indian groups, no other group of Indians sought to merge with respondents. All other groups, including petitioner, insisted upon maintaining their separate claims.

On July 31, 1959, the Commission sustained respondents' claim of original Indian title to the lands in "Area B", and ordered that the case proceed to the determination of value, as of March 3, 1853, of the "Area B" lands less certain additional lands excluded by the Commission. 8 Ind. Cl. Comm. 1, 39c. Respondents and the United States both appealed to the Court of Claims, the United States attacking the Commission's order of liability for lands in "Area B", and respondents attacking, *inter alia,* the restriction of their claim to "Area B" and to nontribal Indians. Petitioner and the other separate tribal organizations were given notice of the respondents' appeal.

Petitioner's right to recover for the lands separately claimed by it in "Area A" was sustained by the Commission on September 30, 1959. 8 Ind. Cl. Comm. 111A.

Following the docketing of the appeals in the Court of Claims and the filing of briefs, counsel for the respondents and for the United States engaged in long

[3] Thus Area B included the land claimed by the Yokiah, Yana and Shasta who merged with respondents.

and involved negotiations looking toward a compromise settlement of the litigation. In order to resolve certain factual and legal questions that arose, including an overlap of claimed lands which was caused by the Mission Indians' amendment of their claim to include land in "Area B" and the identity of some of respondents' Indians and Pit River Indians, it was proposed by way of compromise that the claims of the Mission Indians and Pit River Indians be consolidated with the claims of respondents, as restricted by the Commission, for purposes of settlement. All counsel concerned agreed upon terms of a stipulation for the entry of one judgment in the consolidated cases for $29,100,000, subject to approval by the Indians concerned, the Secretary of the Interior and the Commission.

The proposed settlement did not include any lands embraced in petitioner's claim.

According to the stipulation for settlement, the judgment was to be owned equally by all persons represented in the claims of the Mission and Pit River Indians and of respondents. It was further stipulated, however, that it would be left to the Indian Claims Commission or to Congress to determine whether for purposes of sharing in the judgment the class represented by respondents should include Indians represented in the separate tribal claims including petitioner's claim.

By means of a series of twenty meetings held at various locations in California and in some cases mail ballots, all supervised by the Department of Interior, the settlement proposed was presented to and accepted by the Indians involved in the settlement. All of the voting by Indians was upon a proposal restricted to

the lands claimed by the respondents in "Area B" as limited by the Commission in 1958, *supra*, pp. 4-5 plus the lands claimed by the Mission Indians and the Pit River Indians, and to the offsets asserted by the defendant against those groups only.

The settlement as proposed to and accepted by the Indians did not involve payment for any lands claimed by petitioner and did not include any offsets which the United States may have against petitioner.

While negotiations were in progress for the settlement of the claims of respondents, as restricted by the Indian Claims Commission in area and Indians represented, and of the claims of the Mission and Pit River Indians, petitioner sought to force its participation in the settlement by attempting to intervene in the appeals then pending in the Court of Claims which had been taken by respondents and the United States from the Commission's interlocutory order of liability of July 31, 1959.

Petitioner filed its petition for intervention in the Court of Claims on November 19, 1963, asserting that the Indians of the Quechan Tribe were members of the class represented by respondents and complaining that they were excluded from the settlement. The question presented to the Court of Claims was whether members of the Quechan Tribe were represented in respondents' representative claims, as restricted by the Commission. To resolve this question, the Court of Claims, on February 20, 1964, remanded to the Commission for its determination "the issue as to whether or not said intervenors [petitioner] are proper parties in the cases here on appeal, and if so their interest therein * * *." Appendix B, *infra*, p. 23.

The Commission's opinion and order on the remanded issue were entered on March 3, 1964 (Pet. App. 2, 4). The order of the Commission said, in part:

> It is determined that the Quechan Tribe of the Fort Yuma Indian Reservation is not a proper party in the cases of Clyde F. Thompson, et al., and Ernest Risling, et al., as representatives of the Indians of California, which cases are now on appeal before the United States Court of Claims.

In its opinion the Commission reviewed the California claims' litigation so far as pertinent to the issue remanded by the Court of Claims and concluded, in response to the assertion of the Quechan Tribe that the proposed settlement would prejudice the tribe's rights (Pet. App. 9-10):

> We can see no basis for such a contention. The proposed compromise settlement in no way affects the claims of the Quechan Tribe. The lands claimed by the Quechan Tribe are excluded from the area involved in the proposed settlement. The members of the Quechan Tribe are not members of the identifiable group represented by the petitioners in Dockets 31 and 37 [respondents]. * * *

Following the determination of the Indian Claims Commission the Court of Claims entered an order on July 8, 1964, denying the petition for intervention and affirming the March 3, 1964, order of the Commission (Pet. App. 1).

After the approval of the proposed settlement by the Indians involved it was presented to and approved

by the Secretary of the Interior. Following the Court of Claims' denial of the petitioner's attempted intervention, the settlement was presented to the Indian Claims Commission for approval and the Commission entered its final judgment on July 20, 1964, in the amount of $29,100,000 (Pet. App. 11). An amount to pay the judgment was included in the Supplemental Appropriation Act of October 7, 1964, 78 Stat. 1023, and the judgment has been paid pursuant thereto.

ARGUMENT

1. Petitioner is seeking review of a mere fact question ruled against it by concurrent findings of the tribunals below. That question is the membership of the class in respondents' representative claims. Both the Indian Claims Commission and the court below are thoroughly familiar with the California Indians claim litigation which has been before both the Court of Claims, *Indians of California,* 98 C. Cls. 583 (1943); *Clyde F. Thompson,* 122 C. Cls. 348 (1952), cert. den. 344 U.S. 856; and the Commission for many years. The Commission had occasion to consider the scope of respondents' representative claims on three occasions prior to the ruling now in controversy. The Commission considered the question first when the class represented was limited to the disorganized nontribal Indians, 6 Ind. Cl. Comm. 87 (1953), Appendix A, *infra;* second, when the State of California was divided into the "Area A" lands claimed by tribes such as petitioner and the "Area B" remaining lands left to petitioner, 6 Ind. Cl. Comm. 666 (1958); and third, when the Commission ruled against the government and in favor of respondents on their restricted claims, 8 Ind. Cl. Comm. 1 (1959). The Commission again ruled, on March 3, 1964, that the claims of respond-

ents' as restricted by its prior rulings, do not include petitioner's lands and people (Pet. App. 2, 4). The Court of Claims affirmed the ruling (Pet. App. 1). This concurrent determination of fact as to the class involved in respondents' claims by the Commission and the court below will be accepted by this Court. *Graver Mfg. Co.* v. *Linde Co.*, 336 U.S. 271, 275 (1949).

2. Petitioner does not have an interest in respondents' claims now compromised and settled with the United States. The claims, as restricted by the Indian Claims Commission in 1958, 6 Ind. Cl. Comm. 87, and the ensuing settlement included only California lands **not** embraced within the pending claims of organized tribes such as petitioner. Respondents were left with the lands which petitioner and other tribes did not claim. Petitioner has never asserted a claim for any lands awarded by the Commission to respondents. None of the lands within the settlement is within the area claimed by or awarded to Quechan in the separate litigation which it has successfully maintained before the Commission. 8 Ind. Cl. Comm. 111A, September 30, 1959. Moreover the final judgment entered by the Commission in respondents' cases as consolidated for settlement with the cases of the Mission Indians and Pit River Indians (Pet. App. 11) does not affect petitioner's docket in the Commission but leaves petitioner to further deal with its own case as it may choose, free of the restrictions which had once existed when respondents sought unsuccessfully, and over petitioner's own protest, to sue for petitioner's lands and people.

3. Implicit in what is acknowledged by petitioner (Br. 14) is the point that petitioner's land is believed to be less valuable than the lands included in the settlement. Consequently petitioner's members stand to re-

ceive more money from a settlement in which their land is added to the more valuable lands of others than they apparently expect to receive by the separately litigating or settling their tribal claim on its own merits.

As the Commission pointed out in its opinion (Pet. App. 9), "the question as to which group of claimants are to be included in compromise negotiations is between the parties involved and defendant." Not all land in California was of the same value at the date fixed for valuation. Proximity to market, resources, climate and a host of additional factors are weighed in determining land value. The parties to the settlement, after prolonged negotiations, were able to agree upon land values and offsets so that a settlement satisfactory to all concerned could be effected. The Indian parties further agreed among themselves, because of overlapping land claims[4] and the identity of some Pit River Indians, that all Indians represented in the settlement would own the judgment equally.

In its simplest terms, petitioner's complaint is that the defendant is not willing to compromise and settle petitioner's litigation on a basis as favorable as that obtained by other claimants for other California lands. Therefore petitioner seeks to participate in respondents' settlement, because under the compromise procedure established between the Indian parties to the settlement, individual Indians represented will own equal shares and petitioner sees in this the potential

[4] After the representative claims of respondents had been sustained by the Commission, the Mission Indians amended their claim to include certain lands awarded to the representative claims, creating an overlap.

advantage of a greater recovery for its members at the expense of others if it can participate upon the same terms. Petitioner seeks an equal share without an equal contribution.

4. No question of general application is involved in this proceeding. No other tribal claimant for lands in California has objected to the settlement of respondents' claims. Petitioner and other tribal groups elected years ago to go their separate ways and to prosecute their separate claims without respondents. Of the remaining ten tribal claimants, only petitioner has attempted to interfere with respondents' claims and apparently only because hindsight suggests petitioner chose the less profitable course.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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November 1964

APPENDIX A

6 Ind. Cl. Comm. 87

BEFORE THE INDIAN CLAIMS COMMISSION

CLYDE F. THOMPSON, et al., (Indians of Calfornia)	Docket No. 31
ERNEST RISLING, et al., (Indians of California)	Docket No. 37
46 BANDS OF MISSION INDIANS	Docket No. 80
THE NORTHERN PAIUTE NATION, et al.	Docket No. 87
THE SOUTHERN PAIUTE NATION, et al.	Docket No. 88
KLAMATH AND MODOC TRIBES AND YAHOOSKIN BAND OF SNAKE INDIANS	Docket No. 100
YOKIAH TRIBE OF INDIANS, et al.,	Docket No. 176
YANA TRIBE OF INDIANS	Docket No. 215
COLORADO RIVER INDIAN TRIBES, et al.	Docket No. 283
THE WASHOE TRIBE OF THE STATES OF NEVADA AND CALIFORNIA	Docket No. 288
MOHAVE TRIBE OF INDIANS, et al.,	Docket No. 295
THE QUECHAN TRIBE OF THE FORT YUMA RESERVATION, CALIFORNIA	Docket No. 319
PAUL JAKE, et al., EACH ON THEIR OWN BEHALF AND ON BEHALF OF THE SOUTHERN PAIUTE NATION OF INDIANS,	Docket No. 330
SHASTA TRIBE, et al.,	Docket No. 333
PITT RIVER INDIANS	Docket No. 347
CHEMEHUEVI TRIBE, et al.,	Docket No. 351
Plaintiffs,	

v.

THE UNITED STATES OF AMERICA, *Defendant.*

Decided: January 20, 1958

Opinions of Commissioners

SEPARATE OPINION OF CHIEF COMMISSIONER WITT

As to the question of whether or not the Indians of California, petitioners in Dockets Nos. 31 and 37, have

the exclusive right to present claims to the Indian Claims Commission relating to the lands of California does not present any issue of fact (all facts involved being undisputed), I decide said question, and that alone, by this decision.

There is nothing in the language of the Indian Claims Commission Act which supports the contention that the Indians of California have the sole and exclusive right and power to sue and recover on claims for the lands in California. To the contrary, the expressed provisions of Section 10 of said act are otherwise. This section reads as follows:

> "Any claim within the provisions of this Act may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but *wherever any tribal organization exists,* recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, *such organization shall be accorded the exclusive privilege of representing such Indians,* unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission." (Italics supplied)

It is plain from this provision that there is only one situation where the act grants an *exclusive* right and power to sue, namely, where a tribe, band, or group has a governing body recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group and where such governing body is not guilty of fraud, collusion, or laches in the bringing of the suit. In other situations, the act applies the doctrine of representative suits and authorizes any member of any tribe, and, or identifiable group to sue for the benefit of all its members. The Indians of California do not have a tribal organization or governing body, nor is it contended that they have. However, the respective petitioning tribes in Dockets Nos. 87,

88, 100, 330, 283, 288, 295, 319, 351 and 347 each alleges it is a tribal organization and is recognized by the Secretary of the Interior as having authority to represent such tribe. It is not contended that such tribal organization or any of them are guilty of any of the delinquencies that would deny them exclusive rights to assert their respective claims.

The contention of the Indians of California for the exclusive right and power to sue and recover on claims for the lands in California is claimed to be derived from the Act of May 18, 1928. If the contention of the Indians of California for such exclusive right is sustained, this would nullify the above quoted (and underscored) provision of Section 10 and also would nullify the provision of Section 15 of the Indian Claims Commission Act which authorizes tribes to present their claims through attorneys of their own selection; and also would nullify the provision of Section 2 of the Indian Claims Commission Act which provides that said Commission shall hear and determine claims "on behalf of any Indian tribe, band, or other identifiable group of American Indians, residing within the territorial limits of the United States or Alaska."

There can be no doubt as to the meaning of Sections 2, 10, and 15 as hereinabove referred to. These provisions constitute a positive and unambiguous authorization of Indian tribes claiming ownership of lands which were taken by the United States to sue and recover from the United States for such taking, if liability is established. The construction which the petitioners in Dockets Nos. 31 and 37 seek would be a nullification of the rights of tribal claimants as provided in said Indian Claims Commission Act and a nullification of the duty of the Indian Claims Commission to hear and determine such tribal claims.

In *Thompson* v. *The United States* (122 C. Cls. 348), the Court of Claims held that for the purpose of presenting claims to the Commission, the Indians of California (petitioners in Dockets Nos. 31 and 37) were an identifiable

group of American Indians within the meaning of Sections 2 and 10 of the Indian Claims Commission Act. I find nothing in said decision of the Court of Claims, however, holding that said petitioners in Dockets Nos. 31 and 37 have the exclusive power and right to present to the Commission and the exclusive right to recover on claims relating to the lands of California. Neither of the two said issues were presented to the Court of Claims in said case. They were not considered by the Court of Claims, and it is my view they were not decided by the Court of Claims.

The Act of 1928, relied on by petitioners, defines the Indians of California as being "all Indians who were residing in the State of California on June 1, 1852, and their descendants," and petitioners allege they are this group; and this group doubtless includes many, if not all, the persons belonging to tribal plaintiffs in the tribal suits, as well as the Indians whose tribal organizations had ceased to exist. However, said act states that such definition was "for the purpose of the Act"; that is for the purpose of the law suit therein authorized.

In discussing the history of the 1928 Act, the Court of Claims in the Thompson case, above referred to, states, among other things, that:

> "After the cession of California to the United States by the Treaty of Guadalupe Hidalgo of July 4, 1848, thousands of white people entered the State of California, and as a result of this great influx of white people the various bands, groups and communities of Indians which had up to that time existed in more or less distinct Indian fashion, were disrupted; many were killed and those remaining were driven from their places of abode and scattered throughout the State. As a result of this treatment of the Indians in Calfiornia and the policies of the United States thereafter pursued with respect to them, the existence and life of the Indians of California, as bands or groups

> which had previously existed were disrupted and destroyed and such tribes, bands or separate groups constituting villages, have not since that time existed, and for this period of 100 years these Indians have been known only as the 'Indians of California.' "

Elsewhere the Court said:

> The Indians of California who had many years ago lost their identity as distinct tribes, band or villages, had been pressing theirs claims before Congress for many years, and we think it is clear that in enacting the Indian Claims Commission Act, Congress intended to confer upon the Indian Claims Commission jurisdiction to hear and determine such claims.

It seems evident that it was the view of the Court of Claims that Congress created the group "the Indians of California" to represent the Indians whose tribal connections had been lost because of extinction of tribal identity or tribal organization by disruption, destruction, death forced abandonment of their homes, etc.

By permitting the prosecution by the tribal organization that claim to have survived of their claimed losses of land, while at the same time permitting the petitioners in Dockets 31 and 37 to maintain their actions, I think we are carrying out the wishes of Congress as indicated by the Act of 1928, as construed by the Court of Claims, and are not doing violence to the provisions referred to in the act creating the Indian Claims Commission and providing its jurisdiction.

In passing, I will say that the willingness of said petitioners in Dockets 31 and 37 to waive all rights as to approximately 1,600,000 acres in the State of California, involved in Docket No. 100; does not seem reconcilable with the claim of exclusive right of prosecution for all lands in California. This waiver would seem to be an admission

by petitioners in Dockets Nos. 31 and 37, that the Act of May 18, 1928 does not constitute an absolute bar to the suit for or recovery by a tribal claimant on a claim relating to lands in California. If the law as contended for by petitioners in said docket numbers gives said petitioners the exclusive right to prosecute claims for lands in California, this would be a jurisdictional matter and could not be thus waived.

In regard to the contention made by petitioners that to permit the several tribal claimants to maintain their claims would work unfairness and injustice by reason of the fact that members of such tribes have participated in the judgment previously recovered by reason of the 1928 Act, and offsets by reason of expenditures made in behalf of said respective tribes have been allowed against other Indians, it is my view that those matters can be controlled by the distribution of any awards, either by direction of the Indian Claims Commission or by Congress. Petitioners in Docket Nos. 31 and 37 themselves seem to admit that this can be done (see petitoiners' brief, p. 22 and footnote).

Therefore, I am of the opinion that the tribal claimants in Docket Nos. 87, 88, 100, 330, 283, 288, 295, 319, 351 and 347 are each entitled to present and have determined their respective claims relating to lands in California; and that the petitioners in Dockets 31 and 37 can prosecute claims for all lands in California not recovered in the tribal suits.

I am of the opinion that the facts involved are undisputed, and the statements in this decision are sufficient and additional findings of fact unnecessary, but I would consider any contention by any party hereto to the contrary, and any findings requested.

I see no reason for changing orders in Dockets 80, 176, 215, and 333. The petitioners in these cases should be permitted, in my judgment, to *try* to recover as independ-

ent tribes, if they should fail as members of Indians of California. Alternative bases of relief are well recognized rights—and assertable as desired, and especially applicable to California Indians because of their confused condition.

EDGAR E. WITT
Chief Commissioner

SEPARATE OPINION OF COMMISSIONER O'MARR
IN WHICH COMMISSIONER HOLT JOINS

I have read with much interest the opinion of Chief Commissioner Witt and concur in his conclusions that the claimants in Dockets Nos. 87, 88, 100, 283, 288, 295, 319, 330, 347 and 351, may, as they have done, assert claims for lands within the State of California and may recover for such as they may prove they had Indian title to when the defendant acquired them; that as to such lands the Indians of California (petitioner in Dockets Nos. 31 and 37) have no right to make claim therefor. As to the claims set forth in the dockets referred to above, it may be stated that, with the exception of the Quechan Tribe, Docket No. 319, and the Pitt River, Docket No. 347, all those claimants assert claims for lands which extend into California from contiguous areas in the adjoining state of Nevada or Arizona. The Quechan and Pitt River claims are for lands within the borders of California and the Indians of California have waived all claim to Modoc (Docket 100) lands in California.

Aside from the claim of the Indians of California in Dockets 31 and 37, and the claims in the ten dockets mentioned above, there are four Indian groups who have filed claims for lands located entirely within California. They are the Mission Indians, Docket No. 80, Yokiah Tribe, Docket No. 176, Yana Tribe, Docket No. 215, and Shasta Tribe, Docket No. 333. In their petitions, each of these four groups base their claim on Indian title to specific areas of land in that state.

his opinion, the Chief Commissioner refers to the groups who have made stipulations (hereafter set with the Indians of California by this language:

I see no reason for changing orders made in Dockets , 176, 215 and 333. The petitioners in these cases ould be permitted, in my judgment, to *try* to recover s independent tribes, if they should fail as members Indians of California. Alternative bases of relief re well recognized rights—and assertable as desired, nd especially applicable to California Indians because f their confused condition.

e record in this case shows that in 1955 the Indians lifornia and each of said four groups made separate ations as to the handling of their respective claims. tipulations are substantially the same and I set forth ollowing pertinent parts of the stipulation entered by the Indians of California and the Yokiah Tribe, et No. 176, as typical of the others:

1. Docket No. 176, with the consent of the Indian Claims Commission, may be held in abeyance pending he final determination of consolidated Docket Nos. 31 and 37 insofar as Docket No. 176 asserts any claim for compensation based on original Indian title to land in California.

2. If the plaintiffs in consolidated Dockets Nos. 31 and 37, or either of them, should recover compensation for the lands in California, formerly owned by original Indian title by the Indians in California, including the area claimed by petitioners in Docket No. 176, as is more particularly set forth in the petitions in consolidated Dockets Nos. 31 and 37, this case, Docket No. 176, may be dismissed, insofar as Docket No. 176 seeks compensation for lands in California formerly owned by original Indian title.

3. If it should be finally adjudicated that the plaintiffs in consolidated Dockets Nos. 31 and 37, or either

> of them, should not recover compensation for the lands in California, formerly owned by original Indian title, including the lands claimed by petitioners in consolidated Dockets Nos. 31 and 37, this case, Docket No. 176, shall be brought on for trial without prejudice to the plaintiffs in Docket No. 176 and with the same rights as if Dockets Nos. 31 and 37 had never been tried.

This stipulation was followed by an order permitting it to be filed and directed the handling of such claims in accordance with the terms of the stipulation.

The orders in Dockets Nos. 215 and 333 varied from those in Dockets Nos. 80 and 176 only in that they expressly approved the stipulations while there is no such express provisions in the orders in Dockets Nos. 80 and 176.

A reading of the petitions of the Indians of California (Dockets Nos. 31 and 37) shows that these Indians claim compensation for all lands in the State of California, except confirmed grants, and by their briefs maintain that they have the exclusive right to assert a claim for all the California lands, except Modoc lands. As to the granted lands, however, we need not, and do not, for the purposes of this discussion, determine whether they are or are not included as part of the area claimed in the petitions. It is in any event obvious that at the time the stipulations and the orders referred to above were made the Indians of California were contending, as they now are, that they have the exclusive right to claim compensation for all lands in California. The four groups by becoming parties to the stipulation agreed to this theory of the Indians of California, for, it would seem, that unless the Indians of California had such right there would be no basis for the stipulations since the stipulations do not purport to assign the claims of any of the four claimants or authorize the Indians of California to assert claims for them or on their behalf. The contrary is apparent, for by express

provisions of the stipulations and orders the claims are merely "held in abeyance without prejudice to the plaintiffs [claimants] * * * pending the final determination of consolidated Dockets Nos. 31 and 37." It is true, of course, that the stipulations provide for a dismissal of such petitions should the Indians of California recover for lands, which include the lands of said four groups, but they also provide for the contingency that should the Indians of California fail to obtain such a recovery each stipulator could assert its claim independently of the Indians of California. Obviously, the stipulations were based upon the possibility that the Indians of California would be adjudged to have the exclusive right to recover for all lands in the state, including those of the stipulators.

Now that all members of the Commission are agreed that claims for large segments of California lands may be asserted and maintained by the ten tribal claimants independently of the Indians of California, I find no logical or legal basis for holding that the Indians of California may include as part of their claim the lands of the Mission Indians, the Yokiah, Yana and Shasta Tribes, which are claimed in their separate cases. Certainly, the only possible basis for treating them differently is the fact that they entered into the stipulations above referred to which, as I have stated above, do not, in my opinion, change their status as litigants before this Commission, nor that of the Indians of California insofar as permitting them to include in their claims lands of these four groups.

For the reasons mentioned above, I believe the claims of the four groups—Mission Indians, Yokiah, Yana and Shasta—be proceeded with the same as was done with the other ten claims, except the Modoc, and that the same be set down for trial in the reasonably near future. In this connection, it appears that there is already in the record evidence concerning the areas used and possessed by each of these four groups and since such evidence is made available for use by all parties to the consolidated hearing

there should be no great delay in concluding such cases. It may be that the parties desire to rely upon the evidence already in the record, in which event further hearings on the four cases should not be required.

LOUIS J. O'MARR
Associate Commissioner

WM. M. HOLT
Associate Commissioner

APPENDIX B

IN THE UNITED STATES COURT OF CLAIMS

App. No. 2-61

THE UNITED STATES, *Appellant-Appellee*

v.

CLYDE F. THOMPSON, ET AL. and ERNEST RISLING, ET AL
Appellants-Appellees

THE QUECHAN TRIBE OF THE FORT YUMA INDIAN RESERVATION, *Intervenors*

Order

This appeal comes before the court at this time on a motion filed December 18, 1963, by the United States and supported by the Clyde F. Thompson, et al. and Ernest Risling, et al. parties in which it is requested that the petition in intervention filed in this appeal by the Quechan Tribe of the Fort Yuma Indian Reservation be dismissed, or in the alternative that the issue raised by said petition in intervention be remanded to the Indian Claims Commission for its determination. The petition in intervention was filed December 20, 1963, following the court's allowance on June 21, 1963, of the Quechan's unopposed motion for leave to intervene.

Upon consideration thereof together with memorandum in opposition and reply as well as the motion to accelerate filed January 28, 1964,

It Is Ordered that the motion by the United States be and the same is granted to the extent that the court's order of June 21, 1963, allowing the present petition in intervention to be filed is vacated and withdrawn, and the issue as to whether or not said intervenors are proper parties in the cases here on appeal, and if so their interest therein, is remanded to the Indian Claims Commission for its determination. It is further directed that the Commission proceed with said determination with all due haste in order that this appeal which remains before this court in all other respects may proceed.

By the Court
Marvin Jones
Chief Judge

Feb. 20, 1964

Judge Davis took no part in the consideration and decision of this matter.